



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Management Solutions  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNSD; MNDC; MND; FF

### **Introduction**

This is the Landlord's Application for Dispute Resolution, made February 14, 2017, seeking compensation for damage or loss and damage to the rental unit; to apply the security deposit towards its monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties attended the Hearing and gave affirmed testimony.

The Tenant acknowledged receipt of the Landlord's Notice of Hearing documents and its documentary evidence, which was sent by regular mail to the Tenant's forwarding address on February 17, 2017.

The Tenant did not provide documentary evidence to the Residential Tenancy Branch or to the Landlord.

### **Preliminary Matter**

At the outset of the Hearing, the Tenant requested an adjournment in order to provide documentary evidence. I asked the Landlord's agent KC if he had submissions with respect to the Tenant's application for an adjournment. KC asked the Tenant what documentary evidence she intended to provide. The Tenant stated that that there had been a "breakdown of communications" between herself and KC and that she had suffered damages and a loss of privacy during her tenancy. KC did not consent to an adjournment.

Rule 7.9 of the Residential Tenancy Branch Rules of Procedure provides:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

KC did not consent to an adjournment. In this case, I find that the documentary evidence that the Tenant wishes to provide is not relevant to the Landlord's Application, which is the only Application that is before me. Therefore, I find it unlikely that the adjournment would result in a resolution of the Landlord's Application. I further find that the denial of an adjournment would not affect the Tenant's opportunity to be fairly heard. The Tenant was duly served with the Notice of Hearing documents and copies of the Landlord's documents approximately 4 months ago and I find that she has had ample time to prepare for the Hearing and to provide documentary evidence. Therefore, I invited the Tenant to provide oral testimony with respect to her reply to the Landlord's submissions. I also advised her that if she believed she had a monetary claim against the Landlord that she is at liberty to make her own Application for Dispute Resolution.

The Tenant's oral application for an adjournment is dismissed.

### **Issue(s) to be Decided**

Did the Tenant comply with Section 37 of the Act at the end of the tenancy? If not, has the Landlord provided sufficient evidence to prove its claim for damages?

### **Background and Evidence**

#### **The parties agreed on the following facts:**

This tenancy began on February 1, 2016. A move-in Condition Inspection Report was completed on February 1, 2016, with the Tenant and the Landlord's property manager. The Landlord's property manager who was present at the move-in inspection is a different person from the Landlord's agent KC. KC has been the Landlord's property manager since the autumn of 2016.

The tenancy ended on January 31, 2017. KC and the Tenant met to complete a Condition Inspection Report at the end of the tenancy, at which time the Tenant provided her forwarding address in writing.

The Landlord is holding a security deposit in the amount of \$625.00.

The Landlord's agent KC gave the following relevant testimony:

The Landlord provided a Monetary Order Worksheet in evidence. The Landlord is seeking a monetary award, calculated as follows:

Patching and painting walls and trim	\$330.75
Cleaning the rental unit	\$275.25
Replacement of damaged parking remote	\$100.00
Replacement of burned out light bulbs	<u>\$25.00</u>
TOTAL	\$713.00

The Landlord provided a copy of an invoice for patching and painting; an invoice for cleaning; a copy of an "Owner Statement" indicating the cost of replacing the parking remote; a copy of a receipt for a fluorescent compact light bulb. KC testified that, with respect to the latter receipt in the amount of \$47.05, the Landlord is only seeking \$25.00 of the cost.

KC testified that the rental unit was not clean and the walls were damaged at the end of the tenancy. The Landlord provided the Residential Tenancy Branch with 18 colour photographs of the damage. KC stated that the rental unit was painted in December, 2014, and therefore the paint was approximately 2 years old at the end of the tenancy. He testified that there were chips and screw marks in the baseboard, and scuffs on the walls which were beyond normal wear and tear. KC stated that he could not testify to what the former property manager meant by "original paint" on the move-in Condition Inspection Report.

KC stated that the rental unit is approximately 1100 square feet, with 2 bedrooms and 2 bathrooms. He testified that the Tenant's son lived in the rental unit for "the majority of the tenancy".

KC testified that at the end of the tenancy, the rental unit was dusty; both bathrooms and the kitchen required cleaning; the bathroom had to be re-caulked; the patio was dirty; and the carpet had to be cleaned. KC stated that the carpet "has seen better days" and that the Landlord was not charging for cleaning the carpet, re-caulking in the

bathroom, or cleaning the patio. KC stated that it took two cleaners 3 hours (a total of 6 hours) to clean the rental unit. The cleaners were paid \$40.00 per hour each, plus the cost of supplies of \$5.00 and GST of \$12.25.

The invoice for painting and patching provides that the Landlord was charged 7 hours at \$45.00 per hour for labour, no charge for materials, and \$15.75 for GST.

The Tenant gave the following relevant testimony:

The Tenant submitted that the former property manager and KC had a “different perspective regarding cleanliness and normal wear and tear”. She stated that she, her mom, and her sister cleaned the rental unit before she moved in because it was not cleaned to her standards at the beginning of the tenancy. For example, the carpet was dirty, with bike tracks in the dining room and storage area from the previous occupant.

The Tenant acknowledged that there were some dings in the walls in one of the bedrooms, but stated that she patched the wall before she moved out. The Tenant stated that she was told the paint was the “original paint” at the beginning of the tenancy and that there was damage to the walls when she moved in. With respect to the damaged baseboards, the Tenant stated that she had book shelves in front of the baseboards, which protected them against damage. She stated that she had not caused damage to the baseboards.

The Tenant testified that she had black and white photocopies of the photographs, so it was tough for her to see what damages KC was relating to. In particular, she stated that she scrubbed the toilet with bleach but the water is hard water so there was a permanent stain on the toilet.

The Tenant testified that she had the carpets cleaned at the end of the tenancy and that she provided the Landlord’s agent with a copy of the invoice.

The Tenant stated that she picked up a fob from the rental office within the first week of the tenancy and that it was in poor condition. She stated that the former property manager gave no indication at that time that there would be a charge for replacing the fob. She stated that the property manager told her to let him know if it broke and that he would have it replaced.

The Tenant stated that she ran out of time and did not clean the windows, or the window sills, and did not change the light bulbs.

The Landlord's agent KC gave the following response:

KC submitted that the Condition Inspection Report clearly shows that 2 fobs and one remote control were provided at the beginning of the tenancy, but only one fob was returned. He stated that the strata corporation charged the Landlord \$100.00 to replace the broken remote control at the end of the tenancy.

KC acknowledged that the City water has hard water.

### **Analysis**

Section 21 of the Regulation provides:

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Rule 3.7 of the Rules of Procedure provide, in part:

To ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office.

In this case, the Tenant stated that the Landlord did not provide colour photographs to the Tenant. KC did not dispute this and therefore, I find that the Tenant did not have the benefit of receiving an “identical package” of documents and could not effectively respond to that portion of the Landlord’s evidence. For this reason, I have not considered the Landlord’s photographs in my Decision. I rely on the Condition Inspection Report with respect to the condition of the rental unit at the beginning and the end of the tenancy.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged, save for normal wear and tear, at the end of a tenancy.

KC testified that the walls and trim in the rental unit were damaged beyond normal wear and tear. The Tenant testified that the paint on the walls and trim was in similar condition at the end of the tenancy as it was at the beginning, save for normal wear and tear. Both parties were present at the condition inspection at the end of the tenancy

and both parties signed the Report, indicating that they agreed with respect to the condition of the paint at that time. The Condition Inspection Report indicates, in part:

Item	Beginning of Tenancy		End of Tenancy	
	Comment	code	Comment	code
Walls and trim	Entry: paint is original	Good	Entry: same plus chips	Good
	Kitchen:	Good	Kitchen:	Good
	Living room: patch marks, nails, few scuffs	Good	Living room: chips on baseboards, screws in baseboards, patch marks, few marks	Good
	Dining room:	Good	Dining room: chips in baseboard	Good
Walls and trim	Main bathroom and ensuite:	Good	Main bathroom and ensuite: dusty	Dirty
	Master bedroom:	Good	Master bedroom: chips on baseboards,	Good
	Bedroom 2: scuffed, dings on wall	Good	patched	Stained
	Den: dings on corner	Good	Bedroom 2: stains from bed posting	
			Den: drips, scuffing, patched holes in closet	Good

Section 67 of the Act provides that if damage or loss occurs as a result of a party not complying with the Act, I may determine the amount of compensation and order that party to pay such compensation to the other party.

Based on the evidence provided by both parties, I find that the Landlord is not entitled to its full claim for the cost of patching and repainting the walls in the rental unit.

Residential Tenancy Branch Policy Guideline 1 provides that the useful life of indoor paint is 4 years. The paint in the rental unit was at least 2 years old, and the Condition Inspection Report, with two exceptions, indicates that the condition of the paint was “good”. With respect to the dusty walls in the bathrooms, I find that painting was not required to clean the walls. Therefore, pursuant to the provisions of Section 67 of the Act, I award the Landlord the amount of **\$45.00** for this portion of its claim (1 hour @\$45.00 per hour for the stain in the second bedroom).

The Landlord is not charging for cleaning the carpets and therefore I make no finding with respect to the condition of the carpet at the beginning or the end of the tenancy.

With respect to the cleanliness of the rental unit at the end of the tenancy, the Condition Inspection Report discloses that the stove top inserts and the top of the refrigerator were dirty; the window coverings and screens in the living room were dusty; the inside of the drawers in the main bathroom and ensuite were dirty; the electrical outlets in the master bedroom were dusty; the toilet in the second bathroom was dirty; and the baseboards in the second bedroom were dusty. The invoice for cleaning the rental unit at the end of the tenancy indicates that the “professional move-out clean” took 6 hours and that the Landlord was charged \$40.00 per hour for the professional cleaners.

I accept the Tenant’s submission that there are differences of opinion with respect to what is “reasonably clean”; however the Tenant did acknowledge that she did not complete the cleaning because she ran out of time. I find that the Tenant did not comply with Section 37 of the Act with respect to cleaning the rental unit at the end of the tenancy; however, I also find that the items noted as dirty on the Condition Inspection Report would most probably not take 6 hours to clean. Therefore, I allow this portion of the Landlord’s claim in the amount of **\$80.00** (2 hours @ \$40.00 per hour).

I find that the Landlord provided sufficient evidence to support the remainder of its claim and I allow the Landlord’s claim for the cost of replacing the parking remote and the burned out light bulbs.

The Landlord has been only partially successful in its Application, and therefore I allow partial recovery of the filing fee in the amount of \$50.00.

The Landlord has established a monetary award, calculated as follows:

Patching and painting walls and trim	\$45.00
Cleaning the rental unit	\$80.00
Replacement of damaged parking remote	\$100.00
Replacement of burned out light bulbs	\$25.00
Partial recovery of filing fee	<u>\$50.00</u>
<b>TOTAL</b>	<b>\$300.00</b>

I ORDER that the Landlord apply \$300.00 of the security deposit in satisfaction of its monetary award, and to return the balance of the security deposit in the amount of \$325.00 to the Tenant forthwith.

### **Conclusion**

The Landlord has been partially successful in its Application and is awarded **\$300.00**, which includes partial recovery of the filing fee.

The Tenant is hereby provided with a Monetary Order in the amount of **\$325.00** for service upon the Landlord, representing the balance of the security deposit after set-off against the Landlord's monetary award. This Order may be enforced in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 24, 2017

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Residential Tenancy Branch